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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kennedy & Associates Art Conservation

File: B-233197

Date: February 22, 1989

DIGEST

The Architect of the Capitol acted reasonably in selecting the most highly qualified firm for negotiations leading to award, at a fair and reasonable price, of a contract for the conservation of murals at the Library of Congress; the agency was not required to base its ranking of interested firms on price, and acted properly in evaluating qualifications based on responses to qualifications questionnaires sent the firms and recommendations from listed references.

DECISION

Kennedy & Associates Art Conservation protests the Architect of the Capitol's selection of Perry Huston and Associates for negotiation of a contract, under request for proposals (RFP) No. 8853, for the conservation of murals at the Library of Congress. Kennedy protests the failure to use competitive bidding to fill the requirement, and the evaluation of qualifications.

We deny the protest.

As part of the on-going renovation and restoration of the Library, the Architect determined that more than 100 murals painted between 1895 and 1897 on canvas or plaster are in various states of deterioration, including severe flaking and fading of pigments and crumbling of the surface, and require restoration in order to conserve them. In view of the importance of the murals, and since the work must be undertaken in coordination with the renovation of the surrounding areas in the Library, the Architect concluded that the required conservation must be conducted by a single contractor using a team of highly qualified conservators who are accustomed to working as one part of a larger project. An initial 1986 survey of conservation authorities at educational institutions and museums--including the National

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Gallery of Art--indicated that Perry Huston and one other conservator were most highly qualified to satisfy the Library's requirements; only Mr. Huston was available, and the Architect initially contemplated making a sole-source award to him. The overall renovation and restoration program, however, was delayed and a contract was not then awarded to Huston.

In early 1988, in view of the extent of the delay in the program following the initial sole-source determination, and in order to ensure that maximum practicable competition was obtained, the Architect offered other conservation firms an opportunity to demonstrate their qualifications. The Architect contacted the 23 firms thought most capable of performing the required work, and described the deteriorating condition of the murals and the nature of the necessary conservation measures. The agency cautioned the firms that the project would involve a highly concentrated work effort under very tight time constraints, therefore necessitating a large and well-trained staff. Those interested were requested to contact the agency for qualifications questionnaires concerning RFP No. 8853.

The qualifications questionnaire requested information concerning prior experience in the conservation of murals, technical and aesthetic approach to performing and documenting conservation (including a proposal for and the reports from a prior project), quality of past performance, proposed employees, any proposed local office, and financial capability. In addition, the questionnaire requested the submission of the names, current positions, addresses, and telephone numbers of three curators or art historians and three conservators familiar with the firm's work.

Twelve firms returned the qualifications questionnaires by the May 20 due date. Based upon the Architect's initial evaluation of the responses, the Architect selected four firms, including Kennedy (which proposed a joint venture with the Washington Conservation Studio (WCS)) and Huston, whose references would be contacted. One firm was subsequently eliminated due to the departure of its director. After contacting three of the listed references for each of the remaining firms, the agency concluded that Huston, which received all 120 available points, was most qualified, and in fact was "uniquely qualified," to satisfy the agency's needs; Kennedy ranked second with 86 points. The Architect then entered into negotiations with Huston to reach agreement on a satisfactory contract at a fair and reasonable price. Upon learning that it had not been selected for negotiations, Kennedy filed this protest with our Office.

As a preliminary matter, neither the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. § 471 et seq. (1982), nor the Competition in Contracting Act of 1984, 41 U.S.C. § 252 et seq. (Supp. IV 1986), which amends the FPASA, governs the procurements of the Architect. See 40 U.S.C. § 474 (1982); 41 U.S.C. § 252 (1982); HSQ Technology, B-227054, July 23, 1987, 87-2 CPD ¶ 77. Further, the Architect is authorized to contract for renovation of the Library without regard to the requirement for advertising in 41 U.S.C. § 5 (Supp. IV 1986). Act of Aug. 22, 1984, Pub. L. No. 98-396, 98 Stat. 1369, 1398. In such a case, where the basic procurement statutes are not applicable to a protested procurement, we review the actions taken by the agency to determine whether they were reasonable. Superior Reporting Services, Inc., B-230585, June 16, 1988, 88-1 CPD ¶ 576.

Kennedy first disputes the Architect's determination that Huston is "uniquely qualified" to satisfy the agency's minimum needs; according to the protester, a number of conservators are qualified to conserve the murals. Kennedy argues therefore that either a contract should be awarded on the basis of competitive bidding by qualified firms or the requirement should be divided among qualified firms.

We find nothing objectionable in the Architect's procurement method here. We think the Architect reasonably determined that selection of the single, most qualified conservation firm was necessary to assure coordination with the overall renovation of the Library and, ultimately, the proper conservation of important works of art. This being the case, we do not believe it was improper for the Architect to subordinate price and select the most competent firm based on technical considerations. It follows that we reject the argument that the agency should have divided the requirement among several firms, which would have resulted in some of the work being performed by less qualified firms. The Architect's approach here was not based on normal sealed bid or negotiated procurement procedures, but it was similar to the procedures used to procure architect-engineering services, see 40 U.S.C. §§ 541-544 (1982), which also are designed to permit the selection of the most highly qualified firm. We think it was reasonable to use similar procedures under the circumstances here.

Kennedy also questions the evaluation of its qualifications. Huston received a higher evaluation score than Kennedy and was found to be the most highly qualified firm to perform the required conservation work based on responses to a number of qualifications questions. However, the single

most important factors in the evaluation were the recommendations of the references contacted by the agency. The three references contacted on behalf of Huston, including a conservator at the National Gallery of Art, all gave the firm's president, Perry Huston, a very high recommendation. As documented in the agency records, these references reported of Perry Huston, a past president of the American Institute for Conservation of Historic and Artistic Works, that: "there is no one higher in quality"; the quality of his work is as "good or better than [that of] anyone in the country"; he displays "great sensitivity" for the work of art as a whole; he is up-to-date on new materials and techniques; he expects and is "very receptive" to input from curators; and he is "unique in his qualifications to manage a big enterprise," having run a large shop of 10 to 12 conservators and displayed an ability to manage, schedule and meet deadlines (notwithstanding the thoroughness of his work).

On the other hand, while Ellen Kennedy, the co-owner of Kennedy & Associates, received from one of her references a "sound recommendation" as a conservator "knowledgeable" about large-scale murals, that reference stated that he lacked knowledge of her recent work, and the other two references contacted on behalf of the firm were less positive. Agency records indicate that one curator listed by Kennedy as a reference reported only limited experience with Ellen Kennedy's work and of having received advice "not to use her on anything but minor projects. " Another reference reported that while her work was "structurally O.K.," he had "reservations" about its aesthetic quality.

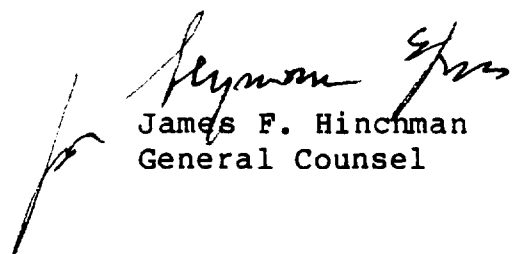
Kennedy claims that the curator contacted by the Architect has orally denied stating that he had been advised not to use the firm on anything but minor projects; according to the protester, the curator's experience with the firm is limited only by the scarcity of conservation funds and not by any concern with respect to quality. We note, however, that while Kennedy states that the curator is prepared to make a written denial of the agency's version, no such written statement by the curator has been received by our Office. In any case, Kennedy does not claim that the curator provided a positive recommendation to the agency. An offeror receiving only one somewhat favorable recommendation and at least one unfavorable recommendation cannot expect to be evaluated as highly as an offeror receiving three very favorable recommendations. Accordingly, Kennedy has not demonstrated that the Architect's evaluation in this regard was unreasonable.

Kennedy questions other aspects of the evaluation. For example, Kennedy was also downgraded because its qualifications questionnaire indicated neither that Kennedy had previously conserved works in which oil was painted directly on plaster (estimated to account for 20 percent of the murals in the Library), nor that Kennedy had previously worked with its proposed joint venturer, WCS. Kennedy claims that in fact it has previously conserved murals of oil painted on plaster and once before worked with WCS; further, it argues that the agency never asked for information about prior work with any proposed joint-venturer.

These assertions, even if correct, would not change our conclusion that the evaluation was proper. Kennedy does not argue, and our review does not suggest, that Kennedy otherwise possesses qualifications superior to Huston's. Again, the Architect reasonably determined that it needed to use the most highly qualified firm in order to assure the sound, aesthetically-pleasing conservation of important art. On the basis of the recommendations alone, the agency reasonably could find Huston to be significantly better qualified to perform this particular project; it was not required instead to contract for specialized, highly-demanding work with a conservator receiving less favorable recommendations.

We conclude that under the circumstances, where the Architect clearly must obtain the very highest expertise available at a fair and reasonable price for the conservation of important works of art, the agency acted reasonably in selecting Huston for negotiations leading to award.

The protest is denied.



James F. Hinchman
General Counsel